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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,528	03/29/2004	Walter Forrest Frantz	BOI - 0017US	1916
60483	7590	10/13/2006	EXAMINER	
LEE & HAYES, PLLC 421 W. RIVERSIDE AVE. SUITE 500 SPOKANE, WA 99201				KING, ANITA M
ART UNIT		PAPER NUMBER		
		3632		

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/811,528	FRANTZ ET AL.	
	Examiner	Art Unit	
	Anita M. King	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 08 August 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) 6-9, 11, 12, 18-21 and 23-49 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 4, 5, 10, 13, 16 and 22 is/are rejected.
- 7) Claim(s) 2, 3, 14, 15 and 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 08 August 2006 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

This is the fourth office action for application number 10/811,528, Non-Protruding Seat Track Apparatus and Methods, filed on March 29, 2004.

***Election/Restrictions***

Claims 6-9, 11, 12, 18-21, and 23-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 6, 2006.

***Drawings***

The drawings were received on August 8, 2006. These drawings are acceptable.

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 5, 10, 13, 16, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,302,358 to Emsters et al., hereinafter, Emsters. Emsters (Fig. 10) discloses a payload track adapted for use with a payload assembly, comprising: an elongated support including a first channel member having a first support surface, a second channel member approximately parallel and spaced apart from the first channel member having a second support surface approximately co-planar with the first support surface, the support surface being configured to engage directly or indirectly with a lower surface of a floor panel (5), and an engagement member (25)

centrally disposed between the two channel members, wherein a first vertical side of the engagement member is attached to a first adjacent portion of the first channel member and a second vertical side of the engagement member is attached to a second adjacent portion of the second channel member, and the engagement member includes an engagement surface configured to be coupled to the payload assembly, the engagement surface being at least one flush with and recessed below the lower surface of the floor panel when the support surface is engaged with the lower surface; wherein each of the first and second channel members includes a plurality of longitudinal sides; wherein each of the first and second channel members has a "C"-shaped section; wherein the engagement surface is co-planar with at least one of the lower surface of the floor panel and the support surface; a payload member (7) having at least one support member; and a floor assembly including at least one floor panel (5).

#### ***Allowable Subject Matter***

Claims 2, 3, 14, 15, and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments, see remarks, filed August 8, 2006, with respect to claims 2, 3, 14, 15, and 17 have been fully considered and are persuasive. The rejections in

regards to the Williams and Underwood references of claims 1-4, 10, 13-17, and 22 have been withdrawn.

Applicant's arguments filed August 8, 2006 have been fully considered but they are not persuasive. The rejection advanced against claims 1, 4, 10, 13, 16, and 22 in regards to the reference to Emsters stands.

In response to applicant's argument that Emsters teaches a system to convert part of a main deck of an aircraft from a passenger transport configuration to a freight transportation configuration, and vice versa, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's arguments that Emsters does not teach the limitation of the engagement member and the engagement surface being at least on of flush with and recessed below the lower surface of the floor panel when the support surfaces are engaged with the lower surface, the examiner disagrees, part of the engagement member (25) in the Emsters reference is indeed flush with the floor panel (5) and part of the engagement member is recessed below the lower surface of the floor panel (see Fig. 10). Based on applicant's claim language, which appears to be written in alternative language, Emsters need only meet one of the limitations of the engagement member being flushed with the lower surface of panel or recessed below the lower

surface of the panel and thus, based on the alternative limitation, Emsters clearly meets one of the limitations.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Anita M. King  
Primary Examiner  
Art Unit 3632

October 10, 2006